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## Appeal Decision

Hearing held on 25 November 2015

Site visit made on 25 November 2015

**by Beverley Doward BSc BTP MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 15 August 2016**

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**Appeal Ref: APP/L3245/W/15/3039545**

**Land off Whitridge Way, Trefonen, Oswestry, Shropshire, SY10 9FD**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by R F Trustee Company Ltd against the decision of Shropshire Council.
  - The application Ref 14/00536/OUT, dated 4 February 2014, was refused by notice dated 28 November 2014.
  - The development proposed is the development of 12 dwellings.
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. The planning application was submitted in outline with all matters other than access reserved. I have dealt with the appeal on this basis. A layout plan illustrating a scheme for 12 dwellings was submitted with the planning application. However, other than in respect of the access I have taken this as being for indicative purposes only.
  3. At the Hearing it was identified that the application site did not include a small section of land required to enable access to the site and that the required notices had not been served on the relevant land owners. Following a discussion between all the parties it was agreed that the Hearing into the appeal would continue but that the appellant would submit a revised red line plan including the appropriate area of land to the Council and serve the requisite notice on the owners of the land in question. It was also agreed that the Council would undertake the necessary consultation on the revised plan with all those previously consulted on the planning application. The further consultation period ran from 10 - 31 December 2015 and I have had regard to the comments received in my consideration of the appeal. Accordingly, I am satisfied that no party has been prejudiced by my consideration of the appeal on the basis of the revised red line plan.
  4. The Council's reason for refusal refers to policies of the Shropshire Local Development Framework: Adopted Core Strategy March 2011 (Core Strategy), the saved policies of the Oswestry Local Plan (Local Plan) and the emerging policies of the Shropshire Site Allocations and Management of Development (SAMDev) Plan. The Inspector's Report on the examination into the SAMDev Plan was published on 30 October 2015 and the implications for the appeal of
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the Inspector's Report on the examination into the SAMDev Plan and the main modifications were explored at the Hearing. The SAMDev Plan was adopted on 17 December 2015 and superseded the saved policies of the Local Plan. The Core Strategy and the SAMDev Plan now form the statutory development plan for the area. Accordingly, I have considered the appeal on this basis.

5. After the Hearing session but during my consideration of this appeal I was made aware by the appellant of an appeal decision elsewhere in Shropshire in which the Inspector considered that the Council could not demonstrate a five year supply of housing land because it did not have a robust housing requirement based on an up-to-date Full Objectively Assessed Need for housing (FOAHN). The appeal decision dated 16 May 2016 relates to a site at Teal Drive, Ellesmere<sup>1</sup>. In the interests of fairness and natural justice I considered it appropriate to seek the comments of the parties including those interested parties that spoke at the Hearing as to whether the appeal decision had any bearing on this appeal. I have had regard to the responses received and return to this matter below.
6. A signed and dated Unilateral Undertaking (UU) relating to the provision of affordable housing was submitted with the appeal documentation.

### **Main Issues**

7. In the light of the discussion at the Hearing and having regard to the evidence submitted since the Hearing I consider that the main issues in this case are:
  - whether the proposal for housing in this location accords with the development strategy for the area;
  - the effect of the proposed development on the character and appearance of the area;
  - the effect of the proposed development on the setting of the designated heritage asset of Offa's Dyke and non-designated heritage assets of archaeological interest;
  - whether the proposal is justified by housing land supply considerations; and
  - whether the proposal comprises sustainable development.

### **Reasons**

#### *Development Strategy*

8. Policy CS1 of the Core Strategy sets out the strategic approach to development in Shropshire. It seeks to focus development towards Shrewsbury and the Market Towns and other Key Centres to maintain and enhance their role in providing services and employment and accommodating residential development over the plan period 2006-2026. It also indicates that elsewhere the rural areas will become more sustainable through a 'rural rebalance' approach. In achieving this 'rural rebalance' the policy indicates that development and investment will be located predominantly in Community Hubs and Community Clusters and that outside these settlements development will primarily be for economic diversification and to meet the needs of the local communities for affordable housing.

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<sup>1</sup> APP/L3245/W/15/3067596

9. Policy CS4 of the Core Strategy indicates that in the rural area, communities will become more sustainable by, amongst other things, focusing investment into Community Hubs and Community Clusters and not allowing development outside these settlements unless it meets policy CS5 of the Core Strategy. It also indicates that Community Hubs and Community Clusters are identified in the SAMDev Plan.
10. Policy CS5 of the Core Strategy indicates that new development in the countryside will be strictly controlled in accordance with national planning policies protecting the countryside. It indicates that development proposals on appropriate sites which maintain and enhance countryside vitality and character will be permitted where they improve the sustainability of rural communities by bringing local economic benefits, particularly where they relate to certain identified types of development including rural workers dwellings, affordable housing to meet a local need and the conversion of rural buildings. Although the list is not exhaustive, market housing, other than conversions of rural buildings is not identified as being permitted in the countryside.
11. Policy MD1 of the SAMDev Plan relates to the scale and distribution of development. It indicates that further to the policies of the Core Strategy, sufficient land will be made available to meet the Core Strategy housing requirements; sustainable development will be supported in Shrewsbury, the Market Towns and Key Centres and the identified Community Hubs and Community Cluster settlements, having regard respectively to policies CS2, CS3 and CS4 of the Core Strategy and to the principles and development guidelines in settlement policies S1-S18 and policies MD3 and MD4 of the SAMDev Plan and that additional Community Hubs and Community Cluster settlements will be formally considered for designation as part of a Local Plan review.
12. Policy MD7a of the SAMDev Plan indicates, amongst other things, that further to Core Strategy policy CS5, new market housing will be strictly controlled outside of Shrewsbury, the Market Towns and Community Hubs and Clusters. Suitably designed and located exception site dwellings and residential conversions will be considered where they meet evidenced local housing needs and other policy requirements.
13. The policies referred to above are broadly consistent with the Framework, specifically the advice contained at paragraph 55 that to promote sustainable development in rural areas housing should be located where it will enhance or maintain the vitality of rural communities and that local planning authorities should avoid new isolated homes in the countryside unless there are special circumstances. Policy CS5 of the Core Strategy is also broadly consistent with the core planning principle of the Framework that planning should recognise the intrinsic character and beauty of the countryside.
14. Trefonen is not identified as a Community Hub or Community Cluster within the SAMDev Plan. I note the appellant's concerns about the manner in which the Community Hubs and Community Clusters in the SAMDev Plan were identified. However, I am mindful that the Inspector examining the plan found that, subject to the modifications set out in her report, it was legally compliant and sound. Therefore, I give the appellant's views in the above respect little weight.
15. The appeal site lies within the countryside for planning policy purposes. Therefore, the proposed development being essentially for new market

housing, albeit that it would provide for some affordable housing through the provisions of the UU, would not satisfy policies CS4 and CS5 of the Core Strategy or policy MD7a of the SAMDev Plan. In so far as the proposal would not satisfy these policies it would not be an appropriate windfall development as provided for by policy MD3 of the SAMDev Plan. Accordingly, drawing together all of the above, the proposal for housing in this location would be contrary to the overall development strategy for the area.

*Character and appearance*

16. The appeal site comprises part of a field on the northern edge of Trefonen at the rear of the existing housing on Carneddau Close and Chapel Lane. To the west is a track which is part of the Offa's Dyke National Trail (ODNT). I deal with the effect of the proposed development on the setting of the designated heritage asset of Offa's Dyke as well as non-designated heritage assets as a separate issue below.
17. The appeal site rises in height away from Chapel Lane towards the track that forms part of the ODNT. It is clearly visible from the track. The appeal site is, in the main, restricted from view from Chapel Lane by the dwellings which front on to it and the roadside hedgerow. However, due to the topography some views of it are evident from the section of Chapel Lane at the north western corner of the field where it joins the ODNT. There are also longer distance views of the site on the approach to Trefonen from the north along Oswestry Road. From these various locations the appeal site is seen in the context of the larger field, of which it is a part, and the wider surrounding countryside.
18. Notwithstanding that the appeal proposal is in outline form with all matters other than access reserved, the proposed development would extend the built form of the settlement into the open countryside. In closer distance views the development would have the backdrop of the existing development on Carneddau Close and Whitridge Way. However, it seems to me that in longer distance views on the approach to the village from the north it would, because of the topography, appear prominent and visually intrusive sitting above the existing dwellings on Chapel Lane.
19. Notwithstanding that the development would cover only a proportion of the larger field it would fundamentally and detrimentally change the character and appearance of both the rural setting of the northern edge of the village and the wider surrounding countryside. I am not persuaded that this harm would be materially reduced by boundary treatments or landscaping either in the short or longer term. Accordingly, the proposed development would conflict with Core Strategy policies CS5 and CS6 which together seek to maintain and enhance the character of the countryside and to protect, conserve and enhance the natural environment. Policy CS6 of the Core Strategy, as well as policy CS5, is consistent with the core planning principle of the Framework that planning should take account of the character of different areas and recognise the intrinsic character and beauty of the countryside.

*Setting of the designated heritage asset of Offa's Dyke and non-designated heritage assets of archaeological interest*

20. Offa's Dyke is a scheduled ancient monument which is to the north of the appeal site and runs adjacent to Chapel Lane. The scheduled section of the monument extends to within 15 metres of the appeal site. The glossary to the

Framework defines a scheduled ancient monument as a designated heritage asset. The Framework indicates that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. Significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting.

21. The Dyke has both an immediate and wider landscape setting. In the vicinity of the appeal site its immediate setting is visually affected by residential development both on the Dyke itself and around its boundaries. Its wider setting includes the land to the east on the eastern side of Chapel Lane and the land to the west which includes the remainder of the field which the appeal site forms a part of; this land rises westwards and overlooks the Dyke.
22. The proposed development would obscure the existing views of the Dyke across the appeal site from the west along the ODNT. The extent of the appeal site and the scale of the proposed development mean that views of the Dyke would be obscured only for a short distance after which the view would open up and the Dyke would be visible again. Nevertheless, the proposed development would result in a change to the angle of view and interrupt the continuity of the view. Furthermore, the proposed development would also be visible to those visiting the stretch of Offa's Dyke within the vicinity of the appeal site. Having regard to all of the above therefore, I consider that the proposed development would cause some harm to the setting of the designated heritage asset of Offa's Dyke. The Statement of Common Ground between the main parties indicates that the degree of harm caused to the significance of Offa's Dyke as a Scheduled Monument as a consequence of the development within its setting amounts to less than substantial harm. I agree with this.
23. Interested parties contend that there is the possibility of the subsurface remains of a linear ditch that belongs to the Dyke complex along the eastern boundary of the site and that this would be directly impacted upon by the proposed development. However, there are no objections from the Council's Archaeologist or Historic England in this respect. Furthermore, there is no definitive evidence to confirm the existence of undesignated archaeological remains of Offa's Dyke within the application site. It is also contended that further direct impacts would occur to various surface and sub-surface features that extend across the site including spur sections of the 'Gutter', an 18<sup>th</sup>/19<sup>th</sup> century artificial stone and clay lined water course which extends to the west and south of the site. However, there are no objections from the Council's Archaeologist or Historic England in this respect. There is also no definitive evidence that the proposed development would have a direct impact on other non designated heritage assets including the 'Gutter'.
24. To conclude therefore, whilst I am satisfied that there would be no harm to any non-designated heritage assets there would be some harm to the setting of the designated heritage asset of Offa's Dyke. This harm would be less than substantial. Accordingly in accordance with the advice at paragraph 134 of the Framework the harm should be weighed against the public benefits of the proposal.
25. At the Hearing the appellant indicated that the public benefits of the proposal include the provision of affordable housing, the creation of a softer edge to the village through the design and layout of the scheme and the provision of a

Community Infrastructure Levy (CIL) payment towards the improvement of facilities and services locally. The requirement to provide affordable housing and a CIL payment are policy requirements therefore these benefits would be achieved by any new housing development in any location. In any event the proposal would only provide for 1.2 affordable dwellings and the layout of the development is reserved for consideration at a later date. Accordingly, I am not satisfied that the public benefits of the proposal would outweigh the harm that would be caused by the proposal to the setting of the designated heritage asset of Offa's Dyke.

26. The proposal would therefore conflict with policy CS17 of the Core Strategy in so far as it seeks to ensure that all development protects and enhances Shropshire's historic environment and does not adversely affect the heritage functions of these assets or their immediate surroundings. It would also be contrary to the principle of the Framework of conserving and enhancing the historic environment.

#### *Housing land supply considerations*

27. At the time of submitting the appeal the appellant contended that, notwithstanding the Council's Five Year Housing Land Supply Statement (5YHLSS) published on 12 August 2014, the Council's ability to demonstrate a five year supply of deliverable housing land was, as borne out by various appeal decisions, somewhat fluid and precarious.
28. Following receipt of the Inspector's report on the examination into the SAMDev Plan the Council produced an update of its 5YHLSS. The update uses the methodology utilised in the Inspector's report on the examination of the SAMDev Plan and indicates that Shropshire has a 5.53 year supply of deliverable housing land. At the Hearing the appellant accepted that the Council could demonstrate a five year supply of deliverable housing land but contended that there still remained a need to boost the supply of housing given the level of the supply which was only marginally in excess of five years.
29. As indicated above, since the Hearing session the Inspector in the case of Teal Drive, Ellesmere considered that the Council could not demonstrate a five year supply of housing land because it did not have a robust housing requirement based on an up-to-date FOAHN. I note that the Council is in the process of challenging that decision. However, for the reasons outlined below, neither the appeal decision nor the outcome of the legal challenge would make any difference to my decision in this case. Similarly, the FOAHN report dated 4 July 2016 which the Council has submitted in support of its contention that it is correct and justified in continuing to use the Core Strategy housing requirement figure as the basis for calculating its housing land supply also makes no difference to my decision. Accordingly, I have not considered it necessary to seek the appellant's comments on this report.
30. Even if the Council was unable to demonstrate a five year supply of housing land and I was to conclude that the relevant policies for the supply of housing should not be considered up-to-date given my findings in relation to the effect of the proposed development on the designated heritage asset of Offa's Dyke the presumption in favour would not apply. This is because the second limb of paragraph 14 of the Framework indicates that the presumption in favour would not apply where, as is the case here, specific policies in the Framework indicate that development should be restricted, for example those policies relating to,

amongst other things, designated heritage assets (footnote 9). In any event, even if this was not to be the case, for the presumption in favour to apply the proposal would need to comprise sustainable development and as I find below the appeal proposal would not.

#### *Sustainable development*

31. The Framework makes it clear that the policies that it sets out, taken as a whole, constitute what sustainable development means in practice for the planning system.
32. Paragraph 7 of the Framework sets out three dimensions of sustainable development, namely the economic, social and environmental roles. These dimensions are mutually dependent and should be jointly sought. The appeal proposal would contribute to the social and economic dimension through the provision of housing. However, it would cause harm to the character and appearance of the wider surrounding countryside and the rural setting of the northern edge of Trefonen contrary to the core planning principle of the Framework that planning should take account of the character of different areas and recognise the intrinsic character and beauty of the countryside. It would also cause harm to the setting of the designated heritage asset of Offa's Dyke contrary to the principle of the Framework to conserve and enhance the historic environment. These adverse impacts would in my judgement significantly and demonstrably outweigh the benefits of the proposed development when assessed against the Framework as a whole. Accordingly, the appeal proposal would not comprise sustainable development.

#### *Other matters*

33. The appeal site is within an area of grade 3 agricultural land. I do not have a definitive breakdown of the split between grades 3A and 3B agricultural land. Therefore, I cannot be certain that the site comprises any best and most valuable agricultural land. In any event the decision does not rest on the weight to be attached to agricultural land quality.
34. From the evidence before me I am satisfied that there would be no adverse impact on protected species or wildlife habitats. Furthermore, there is no substantive technical evidence to indicate that the proposal would cause harm to highway safety. However, the absence of harm in these respects are neutral factors and do not serve to weigh in favour of the proposal.
35. The submitted UU relating to the provision for affordable housing is supported by policy CS11 of the Core Strategy. However, given my conclusions on the appeal, there is no need for me to consider this matter further.
36. Both parties have referred to other appeal decisions in support of their case. The decisions indicate the finely balanced nature of the cases and it is clear that each case needs to be judged on its own merits, on the basis of the evidence before the Inspector, and it is on this basis that I have determined this appeal.

#### **Conclusion**

37. The appeal proposal would be contrary to policies CS4 and CS5 of the Core Strategy and Policies MD1, MD3 and MD7a of the SAMDev Plan. Therefore, it would be contrary to the overall development strategy for the area as set out in

the development plan. It would cause harm to the character and appearance of the area contrary to policies CS5 and CS6 of the Core Strategy and harm the setting of the designated heritage asset of Offa's Dyke in conflict with policy CS17 of the Core Strategy. Accordingly, the appeal proposal would be contrary to the development plan as a whole and would not comprise sustainable development.

38. I have found no material considerations which would warrant making a decision other than in accordance with the development plan. Therefore, for the reasons set out above and having regard to all other matters raised, the appeal should be dismissed.

*Beverley Doward*

INSPECTOR



## **APPEARANCES**

### FOR THE APPELLANT:

|                   |   |
|-------------------|---|
| David Parker      | David Parker Planning Associates            |
| Paul Dalton FRICS | Senior Consultant, Roger Parry and Partners |
| Richard Mc Evilly | Roger Parry and Partners                    |

### FOR THE LOCAL PLANNING AUTHORITY:

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|---------------------|--|
| Philip Mullineux    | Principal Planner, Shropshire Council        |
| Mark Perry          | Planning Officer, Shropshire Council         |
| Daniel Corden MRTPI | Principal Policy Officer, Shropshire Council |
| Cllr Joyce Barrow   | Councillor, Shropshire Council               |

### INTERESTED PERSONS:

|                     |  |
|---------------------|--|
| Andrew Heaton       | Representing Trefonen Rural Protection Group |
| Malcolm Andrew      | Representing Trefonen Rural Protection Group |
| Julian Francis CMLI | Chair, Trefonen Rural Protection Group       |
| Tony Cheetham       | Councillor, Oswestry Rural Parish Council    |
| Helen Hunter-Hayes  | Local resident                               |

## **DOCUMENTS SUBMITTED AT HEARING**

1. Copy of Ecology consultation response on planning application.
2. Copy of letter dated 14 October 2013 from Howard Martin to appellant's agent regarding land ownership.

## **DOCUMENTS SUBMITTED AFTER HEARING**

1. Revised site location plan and amended Certificate B.
2. Notification letters sent to owners of strip of land at Whitridge Way dated 3 December 2015.
3. Notification letter sent to agricultural tenant dated 3 February 2014
4. Appeal decision APP/L3245/W/15/3003171.
5. Shropshire Council Consultation letter dated 10 December 2015 regarding revised site location plan and amended Certificate B and list of consultees.
6. Consultation response from Rescue (The British Archaeological Trust) dated 31 December 2015.
7. Consultation response from Phil Hayes and Helen Hunter-Hayes dated 21 December 2015.
8. Consultation response from Mike Foster dated 10 December 2015.
9. Letter from Shropshire Council dated 22 December 2015 confirming adoption of the SAMDev Plan on 17 December 2015.
10. Appeal decision APP/L3245/W/15/3011886.
11. Correspondence from appellant dated 26 May 2016 enclosing supplementary statement referring to appeal decision APP/L3245/W/15/3067596.
12. Correspondence from Shropshire Council dated 17 June 2016 in response to appellant's supplementary statement and confirming that the Council has

- lodged a s288 statutory challenge against the decision and enclosing copies of the claim form, statement of facts and grounds and a letter from the Court.
13. Correspondence from Julian Francis on behalf of Trefonen Rural Protection Group dated 30 June 2016 providing comments on implications of appeal decision APP/L3245/W/15/3067596.
  14. Correspondence from Helen Hunter-Hayes dated 30 June 2016 providing comments on implications of appeal decision APP/L3245/W/15/3067596.
  15. Correspondence from Shropshire Council dated 7 July 2016 enclosing Shropshire Full Objectively Assessed Housing Need report dated 4 July 2016 and an accompanying note outlining its key findings.
  16. Correspondence from Shropshire Council dated 19 July 2016 enclosing further comments on implications of appeal decision APP/L3245/W/15/3067596.